within its general power to take, it must pay a fair price therefor.[5] Furthermore, a transaction binding a municipal corporation may be illegal and yet not *ultra vires*.[6] Finally, if the corporation has power to grant a license, it may, because of large expenditure by the licensee, be equitably estopped to revoke the license, until to continue it would itself be *ultra vires*.[7] But if none of these distinctions is involved, it seems clear that a municipal corporation should not be estopped to set up a claim of *ultra vires*, though the hardship on the other party be great.

An Ohio court has recently decided, however, that a city is estopped from enjoining a gas company from maintaining its pipes laid in the streets, whether the ordinance, in reliance on which the company had acted, was *ultra vires* or not. *Darby* v. *Norwood*, 52 Oh. L. Bul. 253 (C. P. Hamilton Co., Dec., 1906). This result is opposed alike to principle and to authority.[8] If, as is well settled, a municipal corporation is not liable to the purchasers for value of a great issue of *ultra vires* bonds,[9] the city enjoys no larger privilege if permitted to enjoin a grantee from using the pipe lines which the latter has laid in the streets. Nor do the decisions, contrary to the intimation of the present case, show equity a court so tender as to refuse its peculiar aid to further a claim of *ultra vires*, for it will enjoin the collection of taxes to pay void bonds.[10] Those cases which allow an estoppel against a municipal corporation, when there has been long adverse user of public property coupled with large expenditures thereon,[11] afford some analogy. But these not only are opposed by better reasoning,[12] but also do not involve the more serious question of lack of power.

EFFECT OF AGREEMENTS ON THE CHARACTER OF FIXTURES. — When the courts, yielding to business necessity, relaxed the common law rule that whatever is annexed to the soil belongs to the soil, and permitted tenants to remove those fixtures which they had erected for purposes of trade or agriculture, there was opened up a possibility for confusion as to the character of such fixtures during the period of annexation. Since they were chattels both before and after that period, many courts adopted the view that they never lost the character of chattels.[1] If, it was further argued, things bearing such a relation to the land as would normally make them a part of it were allowed to retain their original characteristics because of the special relations of the parties, it followed that the same result might be achieved by agreement.[2] Though this doctrine has been widely accepted and is convenient as between the parties, many courts which profess to recognize it

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[5] Hitchcock *v.* Galveston, 96 U. S. 341.
[6] Howell *v.* Buffalo, 15 N. Y. 512.
[7] Spencer *v.* Andrews, 82 Ia. 14.
[8] Detroit *v.* Detroit City Ry. Co., 56 Fed. Rep. 867, 892, 893; State *v.* Murphy, 134 Mo. 548; Smith *v.* Westerly, 19 R. I. 437, 446.
[9] German Bank *v.* Franklin County, 128 U. S. 526.
[10] Lippincott *v.* Pana, 92 Ill. 24.
[11] Paine Co. *v.* Oshkosh, 89 Wis. 449.
[12] London, etc., Bank *v.* Oakland, 90 Fed. Rep. 691, 701; Webb *v.* Demopolis, 95 Ala. 116. But see 17 HARV. L. REV. 273.

[1] Poole's Case, 1 Salk. 368; Shapira *v.* Barney, 30 Minn. 59. *Contra*, Guthrie *v.* Jones, 108 Mass. 191.
[2] Hendy *v.* Dinkerhoff, 57 Cal. 3; Howard *v.* Fessenden, 96 Mass. 124; Harris *v.* Hackley, 127 Mich. 46. See Fitzgerald *v.* Anderson, 81 Wis. 341.

decline to adjust the rights of third parties on that basis.[3] New York, however, has consistently applied it to all the situations which have arisen, except where the thing attached had become so merged in the land as to lose its identity.[4]

In a recent case in the Court of Appeals, one who purchased an engine, subject to the agreement that it should remain personalty until the purchase price was paid, attached it to land of which he was in possession under a contract of purchase containing a provision that whatever machinery should be attached to the land should become realty. The court permitted the seller of the chattel to recover the unpaid purchase price from the vendor of the realty. *Davis* v. *Bliss*, 187 N. Y. 77. This situation seems to test the soundness of the New York doctrine. It is evident that the person whose agreement can preserve to a fixture its character as a chattel is not the owner of the chattel, but the occupier of the land, who is to annex the chattel.[5] If, then, that person has previously contracted with the owner of the land that the thing shall not retain its character as a chattel, the court is placed in the embarrassing position of deciding which of these promised results has been achieved;[6] or else, since the two agreements are inconsistent, of refusing to consider either as affecting the character of the property. The only possible guide to a choice between the agreements would be the actual intent of the annexor. But the danger in permitting such a person to elect which of the two others shall be preferred is sufficiently apparent. If neither agreement is regarded, the rules applicable under normal circumstances determine the thing to be a part of the land. Therefore, if the rights of the seller of the chattel are to be contingent on its remaining a chattel, this doctrine carried to a logical conclusion must deny him any relief. But fairness demands that he be protected. He has parted with possession of his chattel on conditions to which the law usually gives effect. The vendor of the land, on the other hand, cannot properly demand as security for his purchase price anything more than his vendee equitably had in the thing,[7] — that is, an equity of purchase in the engine. It is believed that the desirable result of the present case may best be achieved by a return to the older principles of our law. After determining whether or not a thing has lost its character as a chattel, in accordance with rules to be uniformly applied regardless of personal agreements,[8] those inequitable situations which arise may be adjusted according to recognized equitable principles.[9]

LIABILITY OF PARTIES TO LOST PROMISSORY NOTES. — The loser of a promissory note, if he wishes to fix the liability of an indorser, must, as usual, make demand on the maker at maturity and give prompt notice to the indorser.[1] Whether he must simultaneously tender a bond of indemnity

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[3] Richardson *v.* Copeland, 72 Mass. 536; Wickes *v.* Hill, 115 Mich. 333.
[4] Holmes *v.* Tremper, 20 Johns. (N. Y.) 29; Ford *v.* Cobb, 20 N. Y. 344.
[5] Jermyn *v.* Hatch, 93 N. Y. App. Div. 175.
[6] See McCrillis *v.* Cole, 25 R. I. 156.
[7] Campbell *v.* Roddy, 44 N. J. Eq. 244; Hurxthal *v.* Hurxthal, 45 W. Va. 584.
[8] Reynolds *v.* Ashby, [1904] A. C. 466; Fifield *v.* Farmers' Bank, 148 Ill. 163. See Prescott *v.* Wells, 3 Nev. 82, 89.
[9] Bringholff *v.* Munzenmaier, 20 Ia. 513; Davenport *v.* Shants, 43 Vt. 546.

[1] Hinsdale *v.* Miles, 5 Conn. 331.